

**UNITED STATES TRUSTEE
DISTRICT OF NEW MEXICO**

**OPERATING GUIDELINES AND REPORTING REQUIREMENTS
FOR CHAPTER 11 DEBTOR IN POSSESSION**

Section 586(a)(3) of Title 28 of the United States Code provides that the United States Trustee shall monitor the administration of chapter 11 cases. These guidelines have been promulgated by the United States Trustee pursuant to the statutory duty to administer bankruptcy cases. **FAILURE TO ABIDE BY THESE GUIDELINES WILL RESULT IN THE UNITED STATES TRUSTEE FILING APPROPRIATE MOTIONS WITH THE COURT.**

Federal Law provides severe criminal penalty for bankruptcy crimes, which include bribery, concealment of assets, false statements, false claims, filing under a fictitious name and perjury. Title 18, United States Code 152, provides penalties of up to 5 years imprisonment or a fine of more than \$5,000 or both.

Brenda Moody Whinery
UNITED STATES TRUSTEE

Ron E. Andazola
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**OFFICE OF THE UNITED STATES TRUSTEE
DISTRICT OF NEW MEXICO
OPERATING GUIDELINES AND REPORTING REQUIREMENTS
CHAPTER 11 DEBTOR IN POSSESSION**

1. GENERAL REQUIREMENTS / DUTIES OF THE DEBTOR

A. The debtor is required to comply in all respects with the Bankruptcy Code and the Bankruptcy Rules and the United States Trustee Operating Guidelines and Reporting Requirements. The debtor shall communicate/negotiate in good faith with all parties in interest while the case is pending.

B. The debtor is authorized to continue in possession of the assets and effects of the business and to carry on normal business until further order of the Court.

C. The debtor must pay all obligations arising after the filing of the petition ("post petition") in full when due. This includes not only general business expenses, but all post-petition obligations including but not limited to:

1. wages
2. FICA, both employees' and employers' share
3. tax withheld from wages
4. all other taxes
5. UST disbursement fees

D. The debtor may not pay pre-petition obligations except as allowed by the Bankruptcy Code or by order of the Court.

E. The debtor may not use cash collateral without the Court's approval or unless each party in interest in the collateral consents to its use.

F. The debtor shall obtain the Court's approval to obtain credit or incur debt, other than the ordinary course of business.

G. The debtor shall file all federal, state and local tax returns when due, or shall procure an extension from the appropriate taxing authority, unless otherwise provided by the Bankruptcy Code or by order of the Court. Debtor shall transmit a copy to the UST of all income tax returns, franchise tax returns (if corporation) or extensions filed during the pendency of the case.

H. The debtor shall cooperate fully with the United States Trustee and any creditor's committee appointed towards the investigation of the debtor's acts and conduct as well as the preparation and formulation of the disclosure statement and plan of reorganization.

I. The debtor shall avoid unnecessary delay in the administration of the case and is expected to progress toward the filing and confirmation of a plan without prejudicial delay. The debtor is charged with the duty to report to the Court and creditors the soundness and desirability of the continuation of the business and to take all necessary steps to prevent depletion or loss of assets during the pendency of the Chapter 11.

J. The debtor shall file with the Initial Report the "**Receipt and Certification**" acknowledging receipt and understanding of the U.S. Trustee Operating Guidelines and Reporting Requirements.

K. Notices and copies of pleadings must be sent to the United States Trustee as required by Bankruptcy Rule 2002(k).

2. BOOKS & RECORDS, BANK ACCOUNTS, USE OF AUTHORIZED DEPOSITORY

A. All books and records of the CH 11 business debtor must be closed as of the date the petition is filed. The debtor in possession must open a new set of books & records. These are the debtor-in-possession books, which must be maintained throughout the bankruptcy. Provisions must be made for separate accounting with respect to prepetition and postpetition accounts and transactions. This requirement applies only to business debtors and to sole proprietor businesses operated by individuals in CH 11 cases.

B. The debtor-in-possession must immediately **close all existing bank accounts** and establish "debtor-in-possession" bank account(s). Existing balances are to be transferred to the DIP account. Debtor in possession accounts are to be opened in federally insured depositories that have agreed to comply with Sec. 345 of the Bankruptcy Code and to comply with the reporting requirements of the U.S. Trustee. The debtor-in-possession accounts must be established in a bank included on the attached list (Exhibit "A"); if the debtor's choice of bank does not appear on the list then the attached "Requirements of the United States Trustee Office To Be An Authorized Depository for Chapter 11 Bankruptcy Funds in the District of New Mexico" (Exhibit "B") must be signed by the bank and returned to the U.S. Trustee Office. If the bank chooses not to comply, the estate funds must be deposited in a bank which will comply with the requirements. If reporting is not consistent with the requirements or if necessary collateral is not pledged, the U. S. Trustee will request that the bankruptcy estate's funds be moved to a complying institution.

C. Debtor-in-possession accounts are to be opened as follows:

General Account: All revenues and receipts and all other income received by the Chapter 11 debtor shall be deposited into this account. Under no circumstances may a debtor engage in cash or other transactions that do not pass through this account.

Payroll Account: At the time payroll is due to be paid to employees, an amount equal to net payroll should be transferred from the general account to this

account, from which payroll is to be made. Payroll accounts are only required if the debtor has six or more employees.

Tax Account: Sufficient funds to cover tax liabilities must be deposited into this account from the General Account as they accrue. Taxes must be paid in a timely manner. Monies may not be drawn from this account to cover payroll and general operating expenses.

D. The new account(s) shall indicate that the debtor is in Chapter 11 as a debtor-in-possession; checks on the account(s) are to be pre-numbered and must include the words "**Debtor in Possession**". All accounts used during the pendency of the case must be established in this manner.

3. INSURANCE REQUIREMENTS

A. All debtors must maintain insurance and make all premium payments thereon when due.

B. Unless the United States Trustee otherwise directs, the following types of insurance must be maintained:

1. Casualty insurance - to cover tangible assets susceptible to casualty loss (fire, theft, vandalism, etc.)
2. Workers' compensation insurance - if the debtor has employees
3. General liability - if the debtor conducts business operations
4. Product liability insurance - if appropriate

The Certificate of Insurance shall state that the U. S. Trustee will be notified within 10 days in the event of cancellation. The Debtor-in-possession shall immediately notify the U. S. Trustee and the Creditors Committee and secured creditors, if applicable, of any lapse or proposed cancellation of any coverage.

4. INITIAL FILING REQUIREMENTS

A. The debtor must comply fully with FBRP 1007. This rule requires the debtor to file schedules and a statement of financial affairs with the Clerk of the Court. Failure either to file your schedules and statement of affairs within 15 days of the date of filing or to obtain an order granting extension of time to file may result in our office filing a motion to dismiss or convert the CH 11 case. A copy of a motion for extension of time to file the schedules and statements must be served on the U.S. Trustee Office.

B. Pursuant to FBRP 1007(d), you must file, **WITH THE PETITION**, a list containing the name, address, phone number and amount of claim of debtor's twenty largest unsecured creditors. This list should not contain the names of any creditors who are "insiders" as that term is defined in Sec. 101(31) of the Bankruptcy Code.

C. The **Initial Report** (form attached) must be submitted to the U.S. Trustee Office within ten (10) days of the date of this letter. All items must be completed and information requested furnished to this office.

5. INITIAL DEBTOR INTERVIEW

A. The United States Trustee requires a personal interview with the debtor. The interview will take place approximately two weeks prior to the §341 Meeting of Creditors and will usually be conducted in the Office of the United States Trustee. A telephonic interview may be scheduled for those debtors who do not reside or conduct business within a convenient commuting distance to the United States Trustee Office.

B. The purpose of the interview is to discuss the debtor's current financial affairs, identify potential problems of administration, and discuss compliance with the regulations of the United States Trustee. The interview will also afford the debtor the opportunity to ask questions regarding the format of the monthly operating reports.

6. CREDITORS MEETINGS

A. Section 341 of the Bankruptcy Code requires a meeting of creditors in each case. A notice of the meeting date and time is sent to all creditors.

B. A representative of the debtor, as well as the debtor's counsel, are required to attend. The debtor's representative must be someone knowledgeable about the debtor's affairs and able to act for the debtor. If a joint petition is filed, both debtors are required to attend. Failure to attend may result in the dismissal of the case. An organizational meeting will be scheduled by the United States Trustee for members appointed to the unsecured creditors committee.

7. MONTHLY OPERATING REPORTS

A. Pursuant to FBRP 2015 and United States Bankruptcy Court Local Rule #12 the debtor is required to file monthly operating reports with the Court and a copy transmitted to the U.S. Trustee Office. **THE ORIGINAL AND ONE COPY OF THE OPERATING REPORT ARE TO BE FILED WITH THE CLERK - THE CLERK'S OFFICE PROVIDES THE COPY TO THE U.S. TRUSTEE.** If a creditors' committee has been appointed in the case, a copy of the report is to be transmitted to the committee. Reports must be submitted whether or not any financial activity has occurred.

B. The operating report form requires a cover/signature page accompany the report. The form requires the signature of the person having responsibility for the Chapter 11 filing (e.g., in a corporate case, the president or chief operating officer; in a limited partnership, the general partner), as well as the signature of the preparer (if other than the responsible party). The preparer may be an employee of the debtor, such as a chief financial officer, or a non-employee, such as an outside accountant. **Both the responsible party and the preparer sign the report under penalty of perjury.**

C. The operating report is due for each calendar month from the time of filing the petition until a plan is confirmed or the case is dismissed or converted. **The report is due the 15th of the month following the reporting period.** (i.e. the June report is due July 15).

D. The debtor will be required to prepare and file one of two reporting forms. The enclosed format(s) must be utilized in filing monthly operating reports. The two reporting forms required to be used are in accordance with generally accepted accounting principles - **MOR Form, for accrual basis accounting; and the CF Form, for cash basis financial information.** The U.S. Trustee Office will make an initial determination with regard to the appropriate reporting form based on information from the filing of the Chapter 11 petition. If one report form or the other better suits your situation, please contact the U.S. Trustee Office to discuss the use of the appropriate form.

The monthly operating report forms required by the U.S. Trustee Office have been designed to assist debtors achieve their reorganizational goals. In addition, the reporting forms provide creditors with relevant and detailed information regarding the financial condition of the debtor. The report forms also provide the U.S. Trustee with the critical information necessary to properly perform its statutory oversight and monitoring function.

E. The standard monthly operating report will consist of the following information: (1) cover/signature page; (2) balance sheet; (3) income statement; (4) cash receipts and disbursements; (5) disbursement detail; (6) accounts receivable aging; (7) post petition payable aging; (8) bank reconciliations; (9) insiders schedule; (10) professionals schedule; (11) secured notes, lease schedule; (12) questionnaire; (13) insurance schedule statement of aged accounts receivable. **A copy of the debtors monthly bank statements are required to be attached to the monthly operating report.**

To assist you in the preparation of the monthly operating report, "Instructions for the Completion of the Monthly Operating Report" is provided with the particular report form.

F. The debtor shall comply with all reasonable requests for supplemental information from the U. S. Trustee or any creditor.

G. Postconfirmation financial reports must be filed by the reorganized debtor on a quarterly basis until the case is converted, dismissed, or a final decree entered. The report must be submitted on the form provided by the Office of the United States Trustee.

8. COMPENSATION

A. Compensation or other benefits (e.g. use of automobile, insurance, meals, etc.) paid from the assets of the estate to the debtor; or if a partnership, to any of the partners; or if a corporation, to any officer, director or stockholder thereof, from the time of the filing of the petition until confirmation of a plan, must be reported to the U.S. Trustee and creditors' committee. An explanation for such compensation or benefits and all income from any source for compensation for services related to the debtor proceeding.

9. CHANGES OR INTERRUPTIONS IN BUSINESS OPERATIONS

Any changes or interruptions in normal business operations must be reported to the U.S. Trustee and the creditors' committee immediately.

10. APPLICATIONS TO EMPLOY PROFESSIONALS

A. A debtor may employ an attorney, accountant or other professional only upon authorization of the court. See 11 U.S.C. §327; Bankruptcy Rule 2014. No payments may be made, either by the estate or a third party, to such attorneys, accountants or other professionals after the bankruptcy is filed without approval of the Court after notice to all creditors and a hearing. See 11 U.S.C. §330; Bankruptcy Rule 2016.

B. Counsel should consult the "United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. §330" for specific procedural and substantive guidance on payment of professionals.

11. NOTICE AND SERVICE ON UNITED STATES TRUSTEE

Generally, copies of all pleadings filed in a chapter 11 case, including those filed in adversary proceedings and contested matters, must be served on the United States Trustee, whether or not the United States Trustee is a party to the proceeding.

12. QUARTERLY FEES

A. Pursuant to the provisions of 28 U.S.C. 1930(a)(6), each debtor in a case pending under the provisions of Chapter 11 is responsible for paying a fee to the U.S. Trustee.

B. Debtors are subject to payment of a quarterly fee for every quarter during which their case remains pending under Chapter 11. The obligation to pay any further fee ends when the Court enters an order of final decree in the case, dismissing the case or converting the case. A plan must provide for payment of all unpaid quarterly fees as of its effective date or the U.S. Trustee will object to the plan.

C. Fees are paid pursuant to the following schedule:

	<u>Quarter</u>	<u>Ending</u>	<u>Due Date</u>
1st Quarter	Jan-Feb-Mar	Mar 31	April 30
2nd Quarter	Apr-May-Jun	June 30	July 31
3rd Quarter	Jul-Aug-Sept	Sept 30	Oct 31
4th Quarter	Oct-Nov-Dec	Dec 31	Jan 31

D. The amount of the fee will vary based upon the amount of money disbursed by the debtor during a quarter - **however, a minimum fee of \$250 is due each quarter even if no disbursements are made.** Disbursements include all payments made out of the bankruptcy estate including money paid to a secured creditor after a sale. The scale used to calculate the fee is as follows:

PLEASE NOTE; EFFECTIVE SEPTEMBER 30, 1996, UPON ENACTMENT OF PUBLIC LAW 104-208 THE QUARTERLY FEE SCHEDULE HAS BEEN AMENDED. IT APPLIES TO QUARTERLY FEES BEGINNING WITH THE 4TH QUARTER OF CALENDAR YEAR 1996.

<u>Disbursement Category</u>	<u>Quarterly Fee Due</u>
No disbursements (minimum)	\$ 250
\$0.01 - \$14,999.99	\$ 250
\$15,000 - \$74,999.99	\$ 500
\$75,000 - \$149,999.99	\$ 750
\$150,000 - \$224,999.99	\$1,250
\$225,000 - \$299,999.99	\$1,500
\$300,000 - \$999,999.99	\$3,750
\$1,000,000.00 - \$1,999,999.99	\$5,000
\$2,000,000.00 - \$2,999,999.99	\$7,500
\$3,000,000.00 - \$4,999,999.99	\$8,000
\$5,000,000 and above	\$10,000

Each debtor will receive a statement regarding the fee approximately two weeks prior to each of the due dates noted above. (A copy of this completed statement is to be included as part of the monthly report for the month of payment). Make the check payable to the U.S. Trustee. The payment should be returned to the following address:

**U.S. Trustee Payment Center
P.O. Box 198246
Atlanta, Georgia 30384**

FAILURE TO PAY THE QUARTERLY FEE IS CAUSE FOR CONVERSION OR DISMISSAL OF YOUR CASE UNDER 11 U.S.C. 1112(b)(10).

The U. S. Trustee may also consider obtaining a judgement in bankruptcy court for unpaid quarterly fees.

Please see the following notice with regard to unpaid quarterly fees.

NOTICE

DISCLOSURE OF INTENT TO USE TAXPAYER IDENTIFYING NUMBER FOR THE PURPOSES OF COLLECTING AND REPORTING DELINQUENT QUARTERLY FEE OWED TO THE UNITED STATES TRUSTEE PURSUANT TO 28 U.S.C. 1930 (A)(6)

Please be advised that pursuant to the Debt Collection Improvements Act of 1996, Public Law 104-134, Title III, §31001(i)(3)(A), 110 Stat. 1321-365, codified at 31 U.S. C. §3701, the United States Trustee intends to use the debtor's Taxpayer Identifying Number ("TIN") as reported by the debtor or debtor's counsel in connection with the chapter 11 bankruptcy proceedings for the purpose of collecting and reporting on any delinquent debt, including chapter 11 quarterly fees, that are owed to the United States Trustee.

The United States Trustee will provide the debtor's TIN to the Department of Treasury for its use in attempting to collect overdue debts. Treasury may take the following steps: (1) submit the debt to the Internal Revenue Service Offset Program so that the amount owed may be deducted from any made by the federal government to the debtor, including but not limited to tax refunds; (2) report the delinquency to credit reporting agencies, (3) send collection notices to the debtor, (4) engage private collection agencies to collect the debt, and (5) engage the United States Attorney's office to sue for collection. Collection costs will be added to the total amount of the debt.

"Exhibit B"

**APPLICATION /REQUIREMENTS OF THE UNITED STATES TRUSTEE OFFICE
TO BE AN APPROVED DEPOSITORY FOR CHAPTER 11 / DEBTOR IN POSSESSION
BANKRUPTCY FUNDS IN DISTRICT OF NEW MEXICO**

For a financial institution to become an authorized depository recognized by the U.S. Trustee Office to accept funds from CH 11 debtors in possession, the institution must affirm in writing that it will:

1. Deposit with a Federal Reserve Bank securities of the kind specified in § 9303 of Title 31 of the United States Code. Section 345(b) of the Bankruptcy Code provides that if the aggregate amount of funds on deposit for a particular estate exceeds that which is insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States (e.g., FDIC \$100,000 insurance), a banking institution must post a bond or pledge securities. As required by 11 U.S.C. § 345(b)(2), securities used as collateral must be government obligations. A government obligation is defined as a public debt obligation of the United States Government and an obligation whose principal and interest is unconditionally guaranteed by the government. In light of this definition, **only United States Treasury Bills, Bonds, or Notes are deemed to constitute acceptable securities for purposes of the authorized depository system.** The deposit of securities shall be held in a joint safekeeping account, pledged to the United States Trustee. Release of any collateral shall be upon request to the United States Trustee or its designee upon proof that collateral is no longer necessary because funds do not exceed insurance limit or that replacement collateral is being immediately submitted.

2. Provide monthly bank statements to the debtor in possession in whose name the account is open and upon request provide a duplicate original to the U.S. Trustee. **Report monthly to the Office of the United States Trustee each bankruptcy account.** The report must include the debtor's name, case number, taxpayer identification number, account type, balance and amount of securities pledged to the United States Trustee. Forward the report to:

United States Trustee Office
P.O. Box 608
Albuquerque, NM 87103
(421 Gold Ave., S.W., Room 112 87102)
(505) 248-6544

3. Checks and statements must be imprinted with the phrase "Debtor-in-Possession Case No. _____". The title should be styled as follows:

Estate of XYZ Corporation
Debtor-in-Possession, Case No. _____
101 Main Street
Anywhere, USA 00000

4. Allow deposits by debtors-in-possession only in accounts insured by the FDIC.

5. Designate an officer who shall be the contact person and responsible for compliance with these requirements and who the U.S. Trustee Office can contact.

6. Provide such additional information as requested by the Office of the U.S. Trustee and comply in any other manner with subsequent requirements established by the U.S. Trustee Office.

The use of terminology such as "approved", "designated" or "authorized" depository serves only to reflect compliance with the broad objectives; they are not meant to be words of limitation, exclusion or privilege. If you are an authorized depository for Chapter 7 funds, you may include the Chapter 11 information on your Chapter 7 report to the United States Trustee's Office. These requirements are not intended to relieve debtors of the duty to comply with applicable sections of the Bankruptcy Code, Rules or law, nor are the requirements intended to modify existing law.

We understand that failure to comply with these requirements may result in the removal of bankruptcy deposits and withdrawal of our status as a CH 11 authorized depository without further notice.

FINANCIAL INSTITUTION

BY: _____

(Name, Signature, Title of Officer)

Address: _____

Phone No.: _____

Contact Person: _____

Dated: _____